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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,776	09/17/2003	Gary K. Michelson	101.0056-16000	4856
22882	7590	11/14/2005		
MARTIN & FERRARO, LLP 1557 LAKE O'PINES STREET, NE HARTVILLE, OH 44632			EXAMINER REIP, DAVID OWEN	
			ART UNIT	PAPER NUMBER
			3733	
DATE MAILED: 11/14/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/664,776

Applicant(s)

MICHELSON, GARY K.

Examiner

David O. Reip

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9/16/05

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 7 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The examiner is unable to find an embodiment in the applicant's disclosure wherein both a portion of the bone plate overlays a portion of "said surface" and wherein said portion of said plate overlays "said surface" *around the entire perimeter* when the fastener is engaged to said plate.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

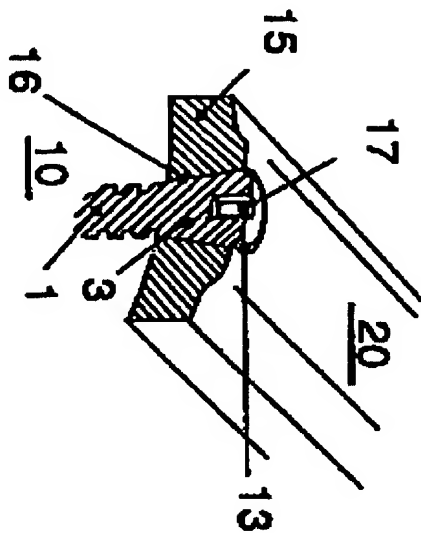
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

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only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Gogolewski et al (U.S. Pat. No. 5,275,601). Fig. 4a of Gogolewski et al shows an orthopedic device having all the limitations as recited in claim 1, including: a polymeric bone plate 20 with a lower surface 21 capable of being placed against at least two vertebral adjacent bodies, an upper surface, and at least one opening 13; a fastener 1 having a first end head 3 with a surface (hexa-hole 17 and/or the entire outer surface of head 3) that is capable of being engaged by a drive tool, and a tissue engaging portion 1. With respect to claims 3 and 4, it is seen that the fastener is capable to being held in a fixed orientation (e.g. with a driving tool inserted into hex hole 17) and the plate rotated (e.g. by hand) relative to the fastener. With respect to claims 6 and 7, it is seen that the entire upper perimeter of the plate opening 13 surrounds or "overlays" the outer-most perimeter of the head 3 of the fastener.



As to the claim 1 limitation “wherein a portion of the bone plate overlays a portion of said surface,” note that, with the plate oriented as shown above, with the plate surface 20 oriented vertically, the portion of the plate that is above the screw head 3 and surface 17 (e.g. at 15) can be said to “overlay” surface 17. An additional argument is made that the limitation “overlays,” given it broadest reasonable interpretation, includes “to lay or spread over or on” and “something laid over or covering something else” (Webster’s II New Riverside University Dictionary, copyright 1994). Therefore, it is seen that the inner surface of opening 13 covers or “overlays” the outer surface of the fastener head. Further, applicant’s argument that since the Gogolewski plate does not overlie the hexa-hole 17, it does not meet the limitation of claim 1 wherein a portion of the bone plate overlays a portion of said surface (“said surface” referring to a surface on the head of the fastener configured to engage a drive tool). This argument is not persuasive, given that the portion of the

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applicant's invention (namely the permanently installed single lock 522, as seen in Figs. 78 and 79) that "overlays" the fastener also does not overlie the surface of the fastener that is engaged by a drive tool, specifically the hex driving hole in the head portion of fastener 170. Further, applicant's argument that the orientation of Gogolewski plate is relevant with respect to whether or not Gogolewski anticipates (under 102(b)) the claims is not persuasive, assuming that the applicant believes that their own claims are valid and fully supported regardless of the orientation of their invention.

Conclusion

Attention is also directed to the prior art reference Yapp et al (U.S. Pat. 5,549,612), made of record by the applicant in an IDS filed 9/17/03. It is noted that the plate 12 may be made of a polymeric material, and that each of the permanently installed single locks 15 "overlays" a portion of the heads of screws 14. Therefore, it is seen that Yapp et al anticipates, under 102(e), at least claims 1-6 of the instant application.

Interference

Claim 1 of this application has been copied by the applicant from U. S. Patent No. 6,605,090. This claim is not patentable to the applicant because of the reasons detailed above.

An interference cannot be initiated since a prerequisite for interference under 37 CFR 1.606 is that the claim be patentable to the applicant subject to a judgment in the interference.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David O. Reip whose telephone number is 571-272-4702. The examiner can normally be reached on 7 A.M.- 4:30 P.M. Mon-Thu and every other Fri..


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David O. Reip
Primary Examiner
AU 3733


Dirts TK 3700